
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: June 14, 2010

IBA Report Number: 10-49

Rules Committee Agenda Date: June 16, 2010

Item Number: 2

Mayor and City Council Transient Occupancy Tax Allocation Process

OVERVIEW

On March 24, 2010, the City Attorney released a memorandum providing legal guidance regarding the Mayor and City Council District Transient Occupancy Tax (TOT) allocations. According to the City Attorney's memo, the current practice for allocating these funds is contrary to the express language of Council Policy 100-03, which governs TOT allocations and establishes certain application procedures and eligibility criteria. The memo concluded that unless Council Policy 100-03 were amended to include alternative procedures for the Mayor and Council District allocations, all allocations of TOT funds must be made through the Commission for Arts and Culture's application process.

On March 26, 2010, Council President Hueso and Councilmember Lightner issued a memo to the City Attorney requesting a review and analysis of amendments to Council Policy 100-03 that would be needed to allow the City Council to continue funding District allocations within the Special Promotional Programs budget. In response, the City Attorney issued a report to the Committee on Rules, Open Government and Intergovernmental Relations ("Rules Committee"), dated June 10, 2010, that reiterated the original opinion and offered several options for the Council to consider.

The IBA has met with the City Attorney's Office and the Executive Director of the Commission for Arts and Culture, and has issued this report to supplement the information provided by the City Attorney, and to assist in framing the policy discussion. Further direction is requested from the Council with respect to the desired approach for future Mayor and Council District TOT allocations.

FISCAL/POLICY DISCUSSION

Municipal Code Section 35.0128 requires that 5.5 cents of the City's 10.5 cent TOT levy be deposited directly into the General Fund, while five cents are deposited in the TOT Fund, and allocated via the Special Promotional Programs budget. Of the five cents deposited in the TOT Fund, the Municipal Code specifies that four cents are required to be used solely for the purposes of promotion, while the remaining one cent may be used for any purpose as directed by the City Council.

Council Policy (CP) 100-03 governs the allocation of TOT revenues deposited in the TOT Fund. One of the express purposes of CP 100-03 is to "provide a set of uniform guidelines, conditions, and criteria governing the application for, and granting of, funds to private non-profit organizations for the purpose of supporting their ongoing operational expenses and/or their sponsorship of special events."

The Council Policy establishes certain purposes for which TOT funds may be allocated, including Economic Development; Safety and Maintenance of Visitor-Related Facilities; Capital Improvements; Arts, Culture and Community Festivals; and Major Events. The Council Policy further establishes an application process and certain general requirements and conditions for organizations requesting funding within the Economic Development or Arts, Culture and Community Festivals categories. These requirements and conditions have been established to protect the City from liability, and to ensure the transparent and proper use of TOT funds. A summary of CP 100-03 requirements and conditions is provided as an attachment to this report.

In FY 2002, the Mayor and each City Council District began receiving annual TOT allotments of \$20,000 and \$10,000, respectively, to be allocated for discretionary purposes. In FY 2008, the City Council increased the TOT allotment for each Council District from \$10,000 to \$25,000 per year, while the Mayor's allotment remained at \$20,000 for an annual total of \$220,000. Prior to FY 2008, contract administration for Council District TOT allocations was primarily handled by Commission for Arts and Culture administrative staff. In June 2007, following the adoption of the FY 2008 budget, the Mayor provided a memorandum to the City Council stating that each Council office would assume the responsibility to manage and account for their individual TOT allocations, including administration of the contract with each recipient organization.

The issue of contract administration was heard by the Budget and Finance Committee in December 2007 and referred to the IBA for analysis. In response, the IBA released Report No. 08-34, City Council Transient Occupancy Tax Allocation Process, which was presented to the Budget and Finance Committee in April 2008. Report 08-34, which is provided as backup material along with the City Attorney's June 10 report, concluded that the Mayor should retain the responsibility of contract administration in order to maintain the necessary checks and balances over the use of public funds, and ensure that

the requirements and conditions established by CP 100-03 are applied consistently across the City.

Report 08-34 further stated that contract administration is a critical management tool for fiscal oversight and should be performed by City staff that have professional expertise in contract administration. However, the IBA recognized the operational difficulties that contract administration had created for the Commission for Arts and Culture in the past. In order to alleviate these difficulties and create a more efficient process, the IBA provided several options for implementing parameters on Council District TOT allocations, including:

1. Establish a minimum funding amount
2. Create an eligibility list for recipient organizations
3. Require organizations to first go through the established application process
4. Limit Council District allocations to contract augmentations.

On April 15, 2008, prior to the Budget and Finance Committee meeting, the Chief Operating Officer issued a memorandum stating that the Mayor was willing to resume contract administration contingent upon the Council adopting, at a minimum, options 1 and 3 as listed above. However, this issue remains unresolved.

Under current practice, Council Districts allocate TOT funds by either augmenting an existing contract previously awarded through the Arts & Culture application process, or by awarding stand-alone contracts to organizations of the District's choosing. In the latter case, such organizations do not typically go through an application or evaluation process. The City Attorney's March 24 memorandum and June 10 report conclude that the current practice of allowing individual Council members to make individual allocations without an application procedure is contrary to the express language of Council Policy 100-03, which provides that TOT funding can only be granted through the application, recommendation, and City Council approval process set forth therein.

As outlined in the City Attorney's June 10 report, if the Council wishes to maintain District-specific TOT allocations, several options exist:

1. Use the application process established in CP 100-03 and currently employed by the Commission for Arts and Culture;
2. Waive CP 100-03 and docket each TOT allocation contract for consideration by the full Council; or
3. Amend Council Policy 100-03 to establish an alternative process for future Mayor and Council allocations.

These options are discussed further below.

Option 1 – Use Existing Application Process

As provided in CP 100-03, the Commission for Arts and Culture administers the application process for TOT allocations within the Arts, Culture and Community Festivals category. The City Council could work with Commission staff to ensure that all groups go through the Arts and Culture application process.

The Commission for Arts and Culture administers two programs, the Organizational Support Program (OSP) and Creative Communities San Diego, each with a different application process. For the OSP, applications are due in October for funding that will be allocated in the following fiscal year. For Creative Communities, applications are due in December for the following fiscal year. It is anticipated that the majority of potential Council District TOT recipients would fall within the Creative Communities program.

The application process administered by the Commission for Arts and Culture, and the contract administration provided by Commission staff, ensures that all TOT funds are allocated for the intended uses, and that all requirements and conditions established by CP 100-03 are satisfied. In addition, it ensures that all funding recipients are held to a uniform set of standards and requirements. If the City Council were to choose this option for District allocations, it is likely that a process could be established whereby Council Districts could either augment awarded contracts to increase the funding levels, or fund qualified organizations that do not score high enough to receive an Arts and Culture allocation.

Option 2 – Waiver Process

This process, as described in the City Attorney's June 10 report, would require Council Districts to docket each TOT allocation contract via the e-1472 process for consideration by the full Council. The Council would then need to waive CP 100-03, state the public purpose of the funding allocation, and approve the contract for funding. This option would not require any changes to CP 100-03.

The City Attorney has indicated that all future Council TOT allocations will need to follow this process unless the existing Arts and Culture applications process is used or CP 100-03 is amended to establish a new process for Mayor and Council allocations. While the waiver process would likely provide the greatest flexibility and discretion for Council District allocations, it does not provide for contract administration or the appropriate level of oversight to ensure compliance with the requirements and conditions set forth in CP 100-03. Without the proper contract administration and oversight, Council Districts and the City in general may be exposed to greater liability.

Option 3 – Amend Council Policy 100-03

As an alternative to the two previous options, the Council may choose to amend CP 100-03 to establish a separate process for Mayor and Council District allocations. If this option is chosen, a number of things would need to be considered, including:

- Would an application process be required?
- If so, what would be the criteria for funding awards?
- What types of programs would be eligible for funding?
- What general requirements and conditions would be established for funding recipients?
- What is the timeframe for funding requests and contract awards?
- Who would be responsible for contract administration and oversight?

This option would allow the Council to create a specific process and customized set of requirements for Mayor and Council District allocations. However, as stated in IBA Report 08-34, we believe that all organizations that receive TOT funds should be held to a uniform set of standards and requirements. The regulations established in CP 100-03 were put in place to protect the City from liability and to ensure the transparent and proper use of City funds, it would be inappropriate to impose those requirements on certain organizations but not others. In addition, creating a separate process for Mayor and Council allocations may work to undermine the applications process established for Arts and Culture allocations.

CONCLUSION

According to the City Attorney's Office, the current practice of City Council Districts making individual TOT allocations without an application procedure is contrary to the express language of Council Policy 100-03. The City Attorney's June 10 report to the Rules Committee provided several options for how Council District TOT allocations may be processed. This report provides additional information on these options, and assists in framing the policy discussion. Further direction is requested from the Council with respect to the desired approach for future Mayor and Council District TOT allocations.

[SIGNED]

Tom Haynes
Fiscal & Policy Analyst

[SIGNED]

APPROVED: Andrea Tevlin
Independent Budget Analyst

Attachment 1: Summary of TOT Application Process Requirements per
Attachment A to Council Policy 100-03
Attachment 2: April 15, 2008 memo from the Chief Operating Officer

**Summary of TOT Application Process Requirements
Per Attachment A of Council Policy 100-03**

General Requirements

- Programs and events must be open to the public
- Must be a legally constituted nonprofit corporation
- Majority of activities must take place within City limits and/or benefit City residents
- Applicants may only submit one application, and can only receive funding under one category
- No funding will be provided for any religious or political activity
- Organizations must adhere to the City's EOC policy

Funding Requirements

- Expenses must be incurred and paid by an organization before release of City funding
- Expenses must be incurred during the FY for which the program is funded
- Funding may not be used for alcoholic beverages
- Funding may not be used for travel, meals, lodging or entertainment, except as otherwise provided. Waivers may be provided with certain conditions
- Funding will only be used for annual operating expenses, and not for capital or equipment outlay, or for awards, trophies, gifts, uniforms or reserves
- Matching funds may be required
- Organizations should possess a minimum three-year track record of operations

Request for Funds/Agreements

- City will provide advance notification of application process to a wide distribution of potential eligible organizations
- Late applications will not be accepted
- If an organization charges fees, application must include disclosure of all such fees
- Organizations must be legal entities in good standing
- Written agreements are required that specify the services or functions to be performed, nature of payment or reimbursement, and financial reporting requirements

Performance Reporting

- Performance reporting is required of all funding recipients
- Organizations must provide a Final Performance Report each year, detailing progress toward meeting goals and objectives outlined in contract's scope of service
- The Final Performance Report shall also include a Statement of Compliance, and be submitted within 90 days of the end of the fiscal year.

Financial Disclosure

- Organizations receiving \$500,000 or more, if more than 10% of annual budget, must include salary and wage ranges for each job classification, including executive salaries and benefits packages
- Organizations receiving less than \$500,000 may voluntarily comply with these disclosure requirements

ATTACHMENT

- Organizations receiving \$10,000 or more are required to submit a financial disclosure within 90 days of the end of the fiscal year. The financial disclosure shall include:
 - Statement of expenditure of City fund by program
 - Statement of revenues and expenditures and a balance sheet of all funds received
- Organizations that receive \$75,000 or more must prepare and submit audited financial statements within 150 days of the end of the fiscal year




THE CITY OF SAN DIEGO
MAYOR JERRY SANDERS

MEMORANDUM

DATE: April 15, 2008

TO: Chair Toni Atkins and Members of the Committee on Budget and Finance

FROM: Jay Goldstone, Chief Operating Officer 

SUBJECT: City Council Transient Occupancy Tax (TOT) Allocations Process

On April 9, 2008, the Independent Budget Analyst issued a memo regarding the City Council Transient Occupancy Tax (TOT) allocation process. This report examines many issues including the recommendation that contract administration for each City Councilmember's TOT allocation should be used as a management tool for fiscal oversight.

The report outlines four options that we believe all merit discussion:

- Option 1: Establish a minimum funding amount
- Option 2: Create an eligibility list for recipient groups
- Option 3: Require that recipient groups first go through the established application process
- Option 4: Limit Council allocations to contract augmentations

In response to the IBA's suggestion that contract administration return to the purview of management, we are willing to accept that request contingent upon the Budget Committee adopting, at minimum, Option 1 and Option 3. We also suggest that the minimum funding amount be set at \$5,000. The amount of small contracts coupled with the fact that recipients do not participate in an application process up front make it impossible for management to administer contracts and provide adequate oversight.

Further, we will work with the IBA to revise and update Council Policy 100-03 which sets forth policies and regulations pertaining to TOT funds. We also agree that all recipients of TOT funds must be held to a common set of standards and that all TOT allocations should be governed by a single policy.

JG/vlh